

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal No.: 1:16-CR-00224
)	
v.)	JUDGE PATRICIA A. GAUGHAN
)	
BOGDAN NICOLESCU,)	
)	
Defendant.)	<u>TRIAL BRIEF OF DEFENDANT</u>
)	<u>BOGDAN NICOLESCU</u>

Now comes the Defendant, Bogdan Nicolescu, by and through undersigned Counsel, and hereby respectfully submits Mr. Nicolescu's Trial Brief in this matter. For purposes of efficiency, Defendant hereby joins in the trial brief filed by Co-Defendant Miclaus, through his Attorney Michael O'Shea, as follows:

- A. **Jury Instructions.** Counsel for the Defendant received a draft of the Government's Proposed Jury Instructions on October 29, 2018. These Proposed Jury instructions are collectively over 100 pages in length. Undersigned Counsel is currently reviewing those proposed instructions to see how much of them invite stipulations. That review is ongoing.
- B. **Voir Dire Questions.** Undersigned Counsel proposes that this Court (in the jury selection process) inquire on the following topics which concern the Defendant:
1. Nationality. The Defendant is a citizen of Romania – like his co-defendants. He has a heavy Eastern European accent, and there have been countless media stories in

the last 18 months about Russian hacking and internet crimes. In that regard, the Defendant requests that this Court or Counsel be permitted to inquire of all prospective jurors about what might indeed be jury bias and assumptions on Eastern European nationals accused of computer crimes or other alleged criminal impropriety.

2. Multiple Counts. There are multiple counts in the indictment. The Defendant therefore respectfully requests that this Court or Counsel be permitted to inquire on whether each juror can independently review each count separately, instead of collectively.

3. Victims of financial crime or phone scams. There is an abundance of phone, computer, and technology crimes on the rise in the United States. There is also an abundance of computer hacking going on in the business and political world. There is also an abundance of phone scams, and the citizens in the Northern District of Ohio are subjected to this activity on almost a daily basis. As a result, the Defendant respectfully requests that this Court or Counsel specifically inquire as to what instances each prospective juror (or their family or friends) has experienced with these types of incidences that may form the basis of bias or prejudice.

C. **Stipulations.** Counsel for the Defendant is currently working to secure copies of all the exhibits to be used by the Government at Trial (estimated to be approximately 3000 exhibits). Once Counsel for the Defendant has a complete copy of all of the proposed exhibits, Counsel will be able to work with the Government on stipulations as to authentication and admissibility.

D. **Legal Issues.** The primary legal issues in this case involve hearsay and related issues.

Further, it is anticipated that some of the agents (both foreign and domestic) may attempt to

testify as to their “interpretation” of what was really being said by a document or a person. Such testimony is not permitted unless the agent in question was actually part of the conversation. See United States v. Isaac, 2018 U.S. Dist. LEXUS 79590 (6th Cir. 2018); United States v. Kilpatrick, 798 F. 3d 365 (6th Cir. 2015); and United States v. Freeman, 730 F. 3d 590 (6th Cir. 2013).

It is also anticipated that the Government may try to use charts and summaries in a myriad of ways – and not just as demonstrative exhibits for opening and closing statements, but to attempt to admit them as exhibits. The Government claims it may do so pursuant to Rule 1006 of the Federal Rules of Evidence. That rule provides as follows:

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The Proponent **must make the originals or duplicates available** for examination or copying, or both, by other parties at a reasonable time and place. And the Court may ***order the proponent to produce them in court.***

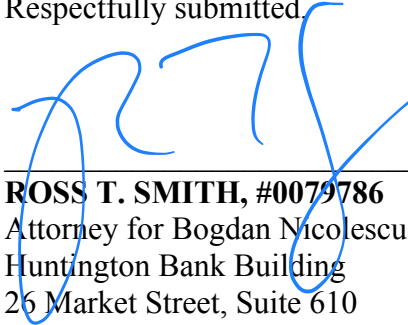
The text of the Rule and Federal Courts have the discretion to mandate that the actual documents be made available for review and actually admitted at trial before any “summaries” can take their place. See Hackett v. Housing Authority of San Antonio (5th Cir. Tex. Jan. 21, 1985), 750 F2d 1308, 17 Fed R. Evid Serv (CBC) 69, cert. denied, (U.S. Oct. 7 1985), 474 US 850, 106 S Ct 146, 88 L Ed 2d 121; United States v. Janati (4th Cir. Va. July 9, 2004), 374 F3d 263; United States v. Rizk (9th Cir. Cal. Oct. 19, 2011), 660 F3d 1125, 86 Fed R. Evid Serv (CBC) 1139; and Auto Indus. Supplier ESOP v. Ford Motor Co., 435 Fed Appx. 430 (6th Cir. 2011).

E. **Estimated Length of Trial.** The Defendant anticipates calling no witnesses. The primary length of this trial will be under the control of the Government.

F. **Exhibits.** The Defendant anticipates not offering any exhibits. The Government has indicated that it will present approximately 3000 exhibits. As indicated above in this trial

brief, once all of the Government's exhibits are marked (and a copy provided to the Defendant for private independent review), the undersigned will be able to work on stipulations on a sufficient number of them, and also raise specific hearsay and related issues to others.

Respectfully submitted,

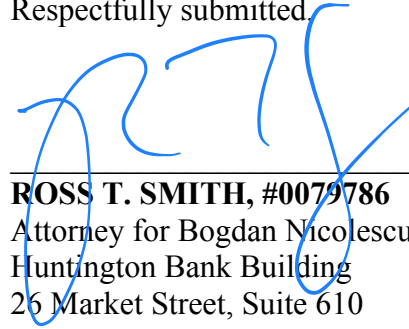


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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2018, a copy of foregoing Defendant, Bogdan Nicolescu's, Trial Brief was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Respectfully submitted,



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